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William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW Room 222
Washington, DC 20554

Dear Mr. Caton:

Enclosed are the original and four copies of the comments of RT Communications, Inc. in response to the Commission's Public Notice in CC Docket 96-45 (Reference DA No. 96-1891) released November 8, 1996.

Also enclosed is one copy of our comments to be stamped and returned in the enclosed self addressed stamped envelope.

Any questions regarding this filing may be directed to me at (719) 594-5800.

Sincerely,

Robert F. Adkisson

Robert F. Adkisson
Vice President

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

COMMENTS OF RT COMMUNICATIONS INC.

Introduction

RT Communications Inc. (RT) is a recently formed rural LEC consisting of sixteen exchanges previously served by US WEST Communications in rural Wyoming. We began providing service to approximately 15,000 subscribers spread across 9,737 square miles in October 1994. Our exchanges range is size from 14 subscribers to 4,266 subscribers. At the time we assumed ownership, all of our customers were served from antiquated electro-mechanical switches and inadequate outside plant facilities. Several exchanges were at or near 100% fill. It was obvious that US WEST, the previous owner, failed to invest sufficiently to provide modern or adequate service to their rural customers. As a result, held orders were at unacceptable levels, and modern communication services were unavailable to most customers throughout rural Wyoming. Those conditions were a perfect example of the result of the lack of adequate and timely investments.

Network Improvements

In granting our Application to acquire these exchanges, the Wyoming Public Service Commission required that RT "complete the upgrade of the purchased facilities to the modern service level required by the Commission within a three-year period"[1] In compliance with this directive, RT has invested $6,329,845 in 1995, $10,606,092 in 1996 and has budgeted an additional $11,874,293 in 1997. If the construction budgeted for 1997 is completed, we will have invested approximately $1,900 per subscriber and substantially rebuilt our entire system in three years. Our actual costs are far more reflective of the investment necessary to serve the customers located in our service territory than any proxy model could ever estimate. The upgrades replace all electro-mechanical switches with digital switching, eliminate multiparty lines, replace antiquated outside plant facilities, and provide access to enhanced services. All of these upgrades are necessary in order to comply with the Telecommunications Act of 1996 and the tentative definition of universal service contained in the Joint Board Recommendations.[2]

Impact of Joint Board Recommendations

The Joint Board Recommendations (Recommendations), if adopted, will cause substantial changes in our future revenue streams seriously impacting our ability to complete the upgrades which we hope to accomplish in 1997. The Recommendations fail to provide RT with sufficient and predictable revenue streams which are necessary to serve our customers located in areas where it would otherwise be uneconomic to provide service.

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[1] Wyoming Public Service Commission Docket No. 70000-TA-93-151, Docket No. 70001-TA-93-7 @ Ordering Para. 16.

[2] CC Docket No. 96-45 Released November 8, 1996 at Paragraph 46.

If the Recommendations are adopted without significant modification, we will be forced to modify our planned construction due to lack of construction funds and our inability to recover our investment without substantial and unsustainable local rate increases.

The proxy methodology endorsed in the Recommendations will not provide proper incentives to provide quality service in high cost service territories. Instead, due to serious financial concerns, we will find it necessary to invest just enough to maintain minimum standards of service. We will also find it necessary to require substantially greater construction contributions from end users requesting new service connections. Do not mistake our statements of concern as a lack of desire to bring quality service to our rural customers. RT was formed with that intention and continues to look for the most efficient ways to accomplish our service goals under difficult geographic and economic conditions. Financial limitations are the only reason that service quality will not be improved in portions of the RT service territory.

The universal service system finally adopted must recognize that, without predictable cost recovery and profit potential, rural companies such as RT will be unable to achieve universal service goals. Prudent management will not build facilities, lenders will withhold loans due to inadequate security, and stockholders will resist costly expansion if such expansion does not promise the possibility of a return on investment. In areas such as those RT serves, assurances are needed that financial support will be available that will afford a reasonable opportunity to recover the actual cost of investment. Commenters have expressed concern that the use of actual cost in determining USF payments encourages gold plating. There is no significant evidence of gold plating and to the contrary, overwhelming evidence of rural telephone companies prudently bringing quality services to their customers at reasonable rates. All of our construction has been accomplished based on efficient engineering designs and competitive bidding in order to assure the most cost effective infrastructure possible.

Calculation of Universal Service Fund Support

The use of the proxy models, as is presently being considered, will not encourage investment in the infrastructure necessary to provide telecommunications services in rural, high cost areas. This fundamental problem with the Joint Board Recommendation endangers the availability of quality telecommunications service in rural America. We disagree with those commenters who assert that the use of embedded costs will not promote competitive neutrality.[3] Our construction program is the least cost, most technologically efficient design we could develop. Our lenders will only agree to continue financing and our stockholders only agree to invest provided there is a reasonable opportunity to recover and earn on these actual investments. Utilizing the embedded costs of an incumbent LEC is a perfectly logical and acceptable alternative to the use of theoretical proxy models, particularly if the incumbent LEC is the only authorized Eligible Carrier.

We propose that, in those rural areas served by a single Eligible Carrier, support continue to be based on actual costs incurred by the Eligible Carrier. Such a requirement will place control in the hands of the state regulators, who are responsible for designating

[3] CC Docket No. 96-45 Released November 8, 1996 at Paragraph 212.

Eligible Carriers. The state commissions will be most familiar with the specific situation and needs of the telecommunications customers.

Such a methodology based on embedded costs will minimize the undesirable effect that proxy models will create of allowing windfall profits for those companies who face little or no competition and whose actual cost of service is below the amount estimated by the proxies. It also minimizes the potential problem of not providing sufficient revenues for those companies whose costs are greater than that estimated by the proxies.

Proxy costs will not result in Predictable and Sufficient Revenue Streams

The Recommended Decision states that "it is vital that the Commission use forward-looking economic costs as the basis for determining support levels. If support is based on embedded costs for the long-run, then incumbents and new entrants alike will receive incorrect signals about where they should invest."[4] We disagree with this conclusion. In order for this conclusion to be correct, it must be assumed that the proxy utilized is an unchanging, perfect predictor of future costs. This is simply not possible. A proxy calculation will become outdated almost as soon as it is released as technology changes and the definition of universal service is reexamined. Regardless of whether proxies or actual embedded costs are utilized, the cost figure utilized will be a constantly evolving and changing target. The conclusion that support based on embedded costs could jeopardize the provision of universal service is false.

All profit oriented companies, regardless of industry, must have the opportunity to establish rates which are sufficient to recover actual costs incurred and still achieve a

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[4] CC Docket No. 96-45 Released November 8, 1996 at Paragraph 275.

profit. In a competitive market, investments will only be made if there can be a reasonable assumption that the stockholders will earn a positive return. If the customer chooses not to buy at the price established by the company, the company will find it necessary to adjust rates or reduce costs. If it is unsuccessful in adjusting rates in a way which will allow recovery of actual costs, the business may fail. In a competitive market, only those companies successful in establishing prices which recover historic embedded cost will be successful.

The Recommendation should be modified so that Eligible Carriers can rely on the receipt of universal service support funds for the economic life of the plant installed without concern that universal service support may vary widely from year to year. Unless this modification is made, Eligible Carriers will not be able to rely on continued support and the fund will not be sufficiently "predictable" to justify major investments in infrastructure.

The fallacy of using a Proxy model to determine funding levels is the failure to require the Eligible Carrier to actually utilize those funds in the provision of quality services. As long as actual funds are paid to Eligible Carriers without a corresponding requirement to actually invest, carriers in high cost areas will only invest an amount sufficient to maintain universal service funding eligibility. This fallacy may be in violation of the Act which states that, "A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[5]

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[5] Telecommunications Act of 1996, Section 254 (e).

Rural Carrier Proxy Phase In

Although we disagree with the Recommendation that proxies be utilized, we support the Joint Board's recommendation that the use of proxies (if ordered) be phased in for rural carriers such as RT. We also strongly disagree with the Recommendation that the phase in amounts be based on historical frozen costs rather than actual costs. The phase in should be based on actual cost incurred during the phase in period rather than establishment of a frozen amount per loop based on historical costs as has been proposed. Establishing a frozen amount as recommended can be disastrous for a company such as RT which has undertaken substantial plant upgrade projects in a short period of time.

The use of 1995 as the base period for frozen loop costs does not allow RT to recover its loop cost which existed at the beginning of 1996, nor does it allow for the recovery of additional investments made in 1996 or planned in 1997. Since outside plant construction must take place in the summer months, the 1995 period does not allow a full year of depreciation for the 1995 investments. The Recommendations will force a substantial shift of revenue requirements to the state jurisdiction beginning in 1998. In addition, the use of 1996 for establishing the frozen amount for DEM weighting and Long Term Support has substantially the same problems identified for loop investment although using 1996 at least allows RT the ability to reevaluate planned construction to determine its economic feasibility. Our financial concerns emphasize how critical it is to maintain universal service support payments based on actual investment for high cost rural companies if the cause of universal service is to be maintained and advanced.

If the Recommendation regarding the frozen per loop amounts is adopted, RT may have no choice but to convert to proxies immediately in 1998. Since the proxy model which would be utilized has not yet been determined, and will not be determined for several months, we will be unable to proceed with planned construction while waiting to determine future revenue streams. This situation certainly does not provide RT, as an Eligible Carrier, a "predictable" revenue stream as required by the Telecommunications Act of 1996.

In addition to the problems associated with the time period when costs are frozen, the Recommended Decision also inappropriately recommends that universal service support funds be based on historical loop counts multiplied by the frozen per loop amounts. Specifically, 1998 revenues will be determined by multiplying the frozen amount per loop times year end 1996 loop counts. Although the Recommended Decision states that, "Rural carriers would receive additional support at the same amount per line as the number of subscribers increase,"[6] utilization of two year old loop counts will not result in sufficient increases in revenue to reflect access line growth. In fact, we expect the amount of support will actually decline from 1997 to 1998 as a result of utilizing outdated line counts. 1998 revenues should be determined by utilizing year end 1997 loop counts rather than year end 1996. We recommend that this change be included in the rules.

Appropriate Use of Proxy Models

As stated, RT does not favor the use of proxy models in determining actual payments to Eligible Carriers in those situations where only one Eligible Carrier exists in a

[6] CC Docket No. 96-45 Released November 8, 1996 at Paragraph 290.

geographic area. Rather, we recommend the continued use of actual cost incurred by the Eligible Carrier. This recommendation will avoid the improper investment signals proxy based payments will cause. It is apparent however, that there is little possibility that the final decision in this Docket will completely disavow the Joint Board Recommendation regarding proxy use. At such time as the state commission authorizes an additional Eligible Carrier, the incumbent Eligible Carrier could be required to begin a phase in to proxy based support.

Funding High Cost Support

RT has serious concerns regarding the funding of the universal service system. As a telecommunications provider, RT also will have funding responsibilities. Rural LECs, such as RT already face severe economic challenges. Care must be taken to design a system which will not further increase the financial load on rural customers in achieving sufficient funding. As stated by Commissioner Chong, "Let us make no mistake about who will foot the bill for this universal service program. It is not the telecommunications carriers, but the users of telecommunications services to whom these costs will be passed through in a competitive marketplace."[7] Long Distance carriers, in response to competitive pressures, may attempt to pass their funding responsibilities through to end users on a flat rate basis in order to keep usage charges low. This would be advantageous to long distance carriers attempting to remain competitive in the usage sensitive toll market at the expense of low volume residential toll users, particularly those low volume users located in areas where high costs already exist. If appropriate safeguards are not implemented restricting

[7] Separate Statement of Rachelle B. Chong.

the amount of flat rate end user charges which can be charged, the cost of funding universal service may result in unaffordable flat rate pricing to residential customers. Maximum end user flat rate charges by long distance carriers should be established.

The Recommendation that contributions be based on a carrier's gross telecommunications revenues net of payments to other carriers unfairly places an excessive funding requirement on LECs to the advantage of long distance carriers. In order to avoid disparate treatment of LECs and long distance companies, and to spread funding over the broadest base of telecommunications services possible, RT likely will find it necessary to charge access customers as well as local service customers in order to recover funding costs. As long as LECs have universal service obligations, regulators have an obligation to provide an opportunity to recover reasonable costs of doing business. The funding of the universal service fund is certainly a reasonable cost of doing business and should be treated as such. Extreme care must be taken by the Commission to formulate policies which will result in the cost of funding being spread across a broad base of telecommunications services and not weighted unfairly to the local service user.

Limit Support to One Residential Connection at a Principle Residence

The Joint Board recommends that support be limited to (1) a single connection at a subscriber's principle residence, (2) a reduced amount for a single connection at a business, and (3) no support whatsoever for multiline businesses or vacation homes. We object to this limitation. These selective qualifications for funding will force rural companies serving high cost areas to engineer facility upgrades based substantially on the level of USF support which will be available rather than designs which most efficiently make available enhanced services to rural customers. Ultimately, this will degrade the service quality in rural areas.

<u>Determination of Eligible Carriers</u>

We support the Recommended Decision restricting eligibility to those carriers that utilize their own facilities in total or in combination with another carriers facilities. Carriers providing service based strictly on resale should not be eligible for Universal Service funding. The Recommendation is not clear regarding whether this requirement is on a "per service area basis," or a "per connection basis." The restriction should be clarified so that the determination is made on a per connection basis, not a service area basis. Carriers reselling a retail service should not be eligible for support. Qualification should only occur when a specific customer's service is provided by an Eligible Carrier's own facilities or a combination of an Eligible Carrier's own facilities and resold network elements obtained from another carrier. This clarification will eliminate the possibility of an Eligible Carrier providing a retail service (which has incorporated universal service funding in its retail price) at a wholesale rate to a competitor that then becomes eligible for universal service funding.

<u>Service Areas Served by Rural Telephone Companies</u>

RT strongly supports the Recommendation that the Commission utilize the current study areas of rural telephone companies as the service areas of Eligible Carriers, thereby requiring competitors to serve the entire study area in order to be an eligible carrier in areas served by small rural telephone companies. This is a positive step in ensuring that "cream skimming" is minimized in rural areas. This action will not eliminate the cream skimming which may occur in rural areas where the new competitive carrier chooses to serve a smaller area than the incumbent's study area and not qualify as an Eligible Carrier. It is entirely possible that we may face competition in our larger exchanges such as Worland, (population 5,742) or Thermopolis, (population 3,247), with no competitor in sight for Osage (population 205) or Jeffrey City (population 77). This possibility reinforces the need to provide "sufficient" support to Eligible Carriers serving high cost rural areas so an Eligible Carrier is not forced to internally subsidize the service provided to its most rural customers.

Concerns with State Jurisdiction Issues

The effort to explicitly identify all implicit subsidies in response to the Act (both interstate and intrastate) will have as yet unidentified financial consequences in the intrastate jurisdictions. These consequences will manifest themselves most dramatically in rural states such as Wyoming which have small populations and high infrastructure costs. Funding will be more difficult to recover through rates than in more urban areas without causing significant end user rate impacts. It appears that the Joint Board Recommendation assumes that as long as the federal universal service fund replaces existing interstate universal service funds and all existing interstate implicit subsidies, states should be responsible for any additional explicit funding which is necessary to accomplish a similar result for intrastate services. This is not what was intended in the Act and could have serious implications for universal service in Wyoming. Provided the state has not adopted additional definitions and standards to preserve and advance universal service within the state beyond that adopted by the Commission,[8] the Commission has the continued responsibility to establish sufficient and predictable funding necessary to keep rates affordable based on the definition of universal service it adopts. This federal responsibility is highlighted in the Joint Board's Recommendation;

> "The federal Universal Service Fund will ensure that telephone rates are within the means of the average subscriber in all areas of the country, thus providing a foundation on which the states can build to develop programs tailored to their individual needs."[9]

Even with interstate support, states will find it necessary to develop universal service funding mechanisms which are complementary to that adopted by the Commission. Many states presently have extremely high implicit subsidies which, in conjunction with existing federal revenue sources, allows local service rates to remain reasonable and affordable. If intrastate end user surcharges necessary to replace implicit state subsidies become substantial, it may become necessary to revisit the amount of funding available from the federal universal service fund in order to maintain affordable local telephone rates as required by the Act.

The Act envisions the federal and state jurisdictions working together. It may be necessary for the Commission to devise procedures where high cost rural states can obtain additional federal funding when necessary to maintain affordable rates when eliminating implicit subsidies.

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[8] Telecommunications Act of 1996, Section 254 (f).

[9] CC Docket No. 96-45 Released November 8, 1996 at Paragraph 818 quoting from CC Docket No. 80-286, Decision and Order, 96 F.C.C. 781, 795 (February 15, 1984).

Summary

RT Communications serves some of the most sparsely populated areas in the country. Without continued revenue support which is sufficient and predictable, we fear that our service will ultimately decline in quality. We urge the Commission to adopt rules which, above all other goals, continues the proud tradition of universal service which now exists in the United States.

Respectfully Submitted

RT Communications Inc.

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December 19, 1996